

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al., *
*
Plaintiffs, *
*
v. * 05-CV-0329 GKF-PJC
*
TYSON FOODS, INC., et al., *
*
Defendants. *

VIDEO DEPOSITION OF JACK WALTON

ANSWERS AND DEPOSITION OF JACK WALTON, produced as a witness at the instance of the Defendants Cargill, Inc. and Cargill Turkey Production, LLC, taken in the above-styled and -numbered cause on the 8th day of April, 2009, A.D., beginning at 1:24 p.m., before Lisa Smith, a Certified Shorthand Reporter in and for the State of Texas, in the offices of Rhodes, Hieronymus, Jones, Tucker & Gable, PLLC, located at 100 West Fifth Street, Suite 400, Tulsa, Oklahoma, in accordance with the Federal Rules of Civil Procedure and the agreement hereinafter set forth.

Walker Declaration Exhibit 13

Jack Walton

April 8, 2009

2

A P P E A R A N C E S

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ALSO PRESENT:

ANN DAVIS - Videographer

Jack Walton

April 8, 2009

3

I N D E X

Appearances	Page 02
Exhibit Index	Page 04
Examination by Ms. Hill.	Page 05
Examination by Ms. Lloyd.	Page 59
Examination by Mr. Mirkes.	Page 63
Further Examination by Ms. Hill	Page 82
Examination by Mr. Iskanian.	Page 82
Further Examination by Mr. Mirkes	Page 84
Reporter's Certificate	Page 85

Jack Walton

April 8, 2009

4

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

E X H I B I T L I S T

No.	Description	Page Mrk'd	Page Ident.
1	Subpoena	05	07
2	Blank Investigation Forms	16	16
3	Investigation Forms and Photographs	53	54
4	Investigation Forms	44	45
5	Investigation Form and Photographs	69	69
6	Investigation Form and Photographs	76	76

Jack Walton

April 8, 2009

5

P R O C E E D I N G S

(Exhibit No. 1 was marked.)

THE VIDEOGRAPHER: This is Tape No. 1 in the videotaped deposition of Jack Walton in the matter of State of Oklahoma versus Tyson Foods, being heard before the District Court in the United States of America, Case File No. 05-CV-0329 GKF-PJC. This deposition is being held at 100 West Fifth, Suite 400, Tulsa, Oklahoma on 4/8/09 at 1:24 p.m.

My name is Ann Davis. The court reporter is Lisa Smith.

Counsel, please introduce yourselves and affiliations and the witness will be sworn.

MS. HILL: Theresa Hill for Cargill, Inc. and Cargill Turkey Production, LLC.

MS. LLOYD: Jennifer Lloyd for George's Inc.

MR. MIRKES: Craig Mirkes for Peterson Farms.

MR. ISKANIAN: Vaughn Iskanian for the State from Riggs Abney law firm.

JACK WALTON,
having been first duly sworn, testified as follows:

EXAMINATION

BY MS. HILL:

Q. Mr. Walton, again on the record, my name is Theresa Hill. We met for the first time a few minutes ago

Jack Walton

April 8, 2009

6

1 in my office; is that correct?

2 A. Yes.

3 Q. All right. I know you've probably given sworn
4 testimony on several occasions before. But for the
5 purposes of this record, I'd like to go over our ground
6 rules today. Is that all right?

7 A. Sure.

8 Q. If you answer one of my questions, I'm going to
9 assume that you understood the question. Is that --

10 A. Yes.

11 Q. -- fair? If you don't understand a question,
12 please stop me ask, ask me to ask it again and I'll try to
13 do a better job of asking a question that you can
14 understand.

15 A. Okay.

16 Q. The court reporter will need your verbal response.
17 You're doing a good job of giving yeses -- yeses here. If
18 you'll try to give yeses rather than nods or uh-huhs or
19 huh-uhs.

20 A. Yes.

21 Q. Thank you. And if you need to take a break at any
22 time, that's perfectly fine. Let's answer the question
23 that's pending, if there is one. Other than that, we
24 can -- we can take a break whenever -- whenever you'd like
25 to.

Jack Walton

April 8, 2009

7

1 A. Okay.

2 Q. All right. If you take a look at what the court
3 reporter has marked as Exhibit 1 here. And identify that
4 for the record, please.

5 A. It is a copy of -- I'm assuming a copy of the
6 subpoena that I received approximately a week ago to appear
7 here today.

8 Q. Okay. And below the box that says that Rhodes
9 Hieronymus, there's another box that says -- that is
10 checked for production. Did you bring any documents or
11 other information responsive to the subpoena with you
12 today?

13 A. No.

14 Q. Why did you not bring any documents with you
15 today?

16 A. The only documents I had were 1099s for payment
17 and they are in storage right now. And I have broken my
18 left wrist about six weeks ago, so I can't move boxes off
19 of boxes in order to dig down in there. If you need them,
20 I can get them at a later date, but that is all the
21 documentation I had. We didn't keep any of the other. We
22 turned it in at the end of the day.

23 Q. Okay. Do you have any e-mails relating to your
24 work on this project?

25 A. Not that I'm aware of, no.

Jack Walton

April 8, 2009

8

1 Q. Did you ever use e-mail with respect to your work
2 on this project?

3 A. The only thing I can think of, and I can't
4 guarantee that we did it, is if one of the other people
5 that was going to Arkansas with us e-mailed me and asked me
6 if I could go. But we never gave any information as far as
7 what we -- what we saw or did when we were there. Just if
8 I could go. And I'm not even sure that happened, but I
9 don't really remember.

10 Q. Did you do any work on a computer relating to this
11 case?

12 A. No.

13 Q. What did you do to prepare for your deposition
14 today?

15 A. Nothing. Oh, I'm sorry. We had a meeting last
16 week with the State for the -- the law firm that represents
17 the State that lasted about 15 minutes, just to kind of get
18 us to prepare for this. And that was all.

19 Q. Okay. Were you at one of the group meetings with
20 other persons?

21 A. Yes.

22 Q. Okay. And I believe Mr. Garren on behalf -- from
23 Riggs Abney represents the State was at the meeting?

24 A. If you say so, yes. I don't remember -- I'm a
25 great face person, but not real good with names.

Jack Walton

April 8, 2009

9

1 Q. As you recall, there was one attorney from a law
2 firm representing the State of Oklahoma at this meeting?

3 A. As I recall, yes.

4 Q. Okay. And what were you told at this meeting?

5 MR. ISKANIAN: Object to form.

6 Go ahead and answer.

7 A. Okay. Basically we just reviewed the facts, kind
8 of -- of what we were going to do to prepare and some
9 things that -- for example, the only documentation that we
10 had had to show that we were there were the 1099s, that we
11 turned all of that documentation at the end of -- end of
12 each trip that we took. That was about it. It was a very
13 short meeting.

14 Q. (BY MS. HILL) Was there any discussion of any
15 electronically stored information?

16 A. No.

17 Q. And was there any discussion about the subject
18 matter of the deposition for today?

19 A. Well, we were there to -- because of the
20 deposition, so I'm probably gonna say yes, but I don't
21 remember anything being pertinent.

22 Q. All right. And did you talk with anyone else,
23 other than the persons at this meeting, in preparation for
24 your deposition today?

25 A. No, I did not.

Jack Walton

April 8, 2009

10

1 Q. All right. The attorney or attorneys who were at
2 this meeting in preparation for this deposition, had you
3 had occasion to meet with these attorneys on any prior
4 occasion?

5 A. No. That was the first time I had met them.

6 Q. And I understand you are with the Tulsa Police
7 Department now.

8 A. Yes.

9 Q. Okay. Can you give me a brief description of your
10 education prior to entering the police force here in Tulsa.

11 A. I graduated from the University of Arkansas with
12 Bachelor's degree in criminal justice.

13 Q. Where did you go to high school?

14 A. Jenks.

15 Q. Did you grow up in Tulsa?

16 A. Since four years old, yes.

17 Q. At the University of Arkansas, did you study any
18 environmental sciences?

19 A. No.

20 Q. Give me a brief overview of your work experience
21 for the Tulsa Police Department.

22 A. I've worked in the capacity of field officer,
23 detective, then promoted to sergeant where I have worked in
24 internal affairs and I've also supervised field officers
25 and right now I'm the sergeant of the family violence unit.

Jack Walton

April 8, 2009

11

1 Q. Okay.

2 A. Been there for -- be 20 years in September.

3 Q. Where did you work before joining the Tulsa Police
4 Department?

5 A. I -- straight out of college.

6 Q. Would it be fair to characterize your work
7 experience as being in an urban area rather than rural?

8 A. Yes.

9 Q. In your work as an investigator for the Tulsa
10 Police Department, did you do investigative work?

11 A. Yes.

12 Q. Okay. And you continue to do investigative work?

13 A. Yes.

14 Q. Are you involved with any investigations of any
15 agricultural matters?

16 A. No.

17 Q. No agricultural crimes?

18 A. No.

19 Q. How about investigating -- any investigation of
20 any poultry operations prior to your work on this case?

21 A. No.

22 Q. Okay. Any experience in agriculture generally?

23 A. None.

24 Q. I have to go through all of these.

25 A. That's fine.

Jack Walton

April 8, 2009

12

1 Q. Any experience in ranching and farming?

2 A. My uncle owned a sod farm, but no.

3 Q. And prior to your involvement in this case, did
4 you have any knowledge about the poultry growing operations
5 in Arkansas or Oklahoma?

6 A. No.

7 Q. Tell me about how you know Steve Steele.

8 A. Steve -- I've known Steve for almost 20 years.
9 Recently he was my major, who is my commander in the
10 detective division, and then recently retired, I believe
11 about six or eight months ago. And he had asked me to go
12 to Arkansas and help him with this documentation of some
13 the chicken waste, litter.

14 Q. How is it that he described this project to you
15 when he first approached you?

16 A. If I remember correctly, it was pretty simple. He
17 said we were gonna go over to Arkansas and we were
18 documenting -- my big part in it was we were documenting
19 where the chicken farms were and trying to determine
20 whether or not they were active chicken farms. I believe
21 only one time that I went over there were we specifically
22 looking for people spreading litter. Most of my -- most of
23 my involvement was we were just trying to find where the
24 chicken farms were located based on aerial maps and then
25 determine whether or not those were active, because some

Jack Walton

April 8, 2009

13

1 were abandoned and obviously not active.

2 Q. Okay. I'll ask you a little bit more about that
3 work in a few minutes.

4 A. Okay.

5 Q. The one time that you were sent to Arkansas to
6 seek out land application --

7 A. Yes.

8 Q. -- do you recall where you -- where you went?

9 A. No. I never drove, so I never quite figured out
10 the directions over there, because a lot of it was mostly
11 dirt roads. And the people that had been over there more
12 than I -- I only rode with three people when I was there,
13 Steve Steele, Rod Hummel and Shane Tuell, and I only rode
14 with him one time. So no, I really don't -- I can tell you
15 Northwest Arkansas and that was about all I know.

16 Q. Do you know how is -- how Steve or others got the
17 information about this potential land application that you
18 were going to observe?

19 A. No, I don't.

20 MR. ISKANIAN: Object form.

21 THE WITNESS: Sorry.

22 A. No, I don't.

23 Q. (BY MS. HILL) And what year was this observation,
24 do you -- can you recall that?

25 A. I believe my participation was in mid to late 2005

Jack Walton

April 8, 2009

14

1 and then I believe only one time in 2006. So I'm gonna say
2 late 2005 or early 2006.

3 Q. This one time to go observe land application, do
4 you believe that was in 2006, the one time in 2006 or --

5 A. I really don't know. I don't recall.

6 Q. When you went out there, you mentioned several
7 people that -- who you would go with to make these
8 investigations. Did you always go with just one person or
9 did you go with all those persons at one time?

10 A. It would kind of depend on the number of people.
11 There were times where more people went than other times.
12 We were always two to a car.

13 Q. That was my question. That's what I've understood
14 from prior depositions is there were teams of two.

15 A. Correct.

16 Q. So I wanted to make sure that you didn't have a
17 team of three on one occasion.

18 A. No.

19 Q. Okay. And what was your job if you weren't the
20 driver?

21 A. Basically an observer. I would take pictures of,
22 like I say, mostly what we observed to be active and
23 nonactive chicken houses and make notations in the logbook.
24 Again, mostly to determine whether or not they were active
25 or not active.

Jack Walton

April 8, 2009

15

1 Q. Were you generally the log keeper, then, if
2 someone else was driving on the farm?

3 A. Some of that would depend on who I was with.
4 Some -- like Steve Steele was more the note taker than I
5 was. But with Rod Hummel, we'd kind of split it up evenly,
6 so I'm gonna have to say yes and no. It was kind of 50/50.

7 Q. Okay. This one time that you went out to the
8 watershed to see land application, do you recall the
9 grower's name?

10 A. No, I don't.

11 Q. Do you recall the company that that grower had a
12 contract with to raise poultry?

13 A. No.

14 Q. Do you recall what type of poultry operation it
15 was?

16 A. No.

17 Q. Remember anything remarkable about that
18 observation?

19 A. No.

20 Q. Okay. In your work for the Tulsa Police
21 Department, have you had any environmental training?

22 A. We've had some Hazmat training for hazardous
23 materials, but that's just for our safety and it's limited.

24 Q. Have you been involved in any incidents where
25 there have been releases of hazardous materials?

Jack Walton

April 8, 2009

16

1 A. No.

2 (Exhibit No. 2 was marked.)

3 Q. I'm gonna ask you to take a look at Exhibit No. 2.
4 These are blank forms and I'll ask you if you recognize
5 this blank form that is Bates numbered OK-PLF 0002252.

6 A. Yes, I do.

7 Q. Are these the forms that you would fill out when
8 you were making your observations in the field?

9 A. Yes, they are.

10 Q. The top box to the right, poultry type, how could
11 you determine what poultry type was at this operation or
12 could you?

13 A. I don't think I could, no. I -- I -- again, I'm
14 not familiar with every circling one of those, but I won't
15 say I didn't, so --

16 Q. Do you have any training in the differences
17 between broilers, layers, pullets and turkeys?

18 A. No, not personally.

19 Q. Okay. Tell me about the training, if any, that
20 you received before you went out in the field to fill out
21 these forms?

22 A. None. We were just there to document.

23 Q. Did you have any meetings prior to your first trip
24 out to the watershed?

25 A. No.

Jack Walton

April 8, 2009

17

1 Q. Okay. Do you recall your first trip to the
2 watershed?

3 A. Yes.

4 Q. Who were you with that day?

5 A. Rod Hummel.

6 Q. Okay. Anything you recall about that trip?

7 A. I remember thinking I never had any idea there
8 were that many chickens in Northwest Arkansas.

9 Q. You found a few chicken houses that day?

10 A. There were -- and -- and then when you -- when you
11 kind of learn how many chickens are in each house and, you
12 know, things like that, it's -- it's truly kind of
13 mind-boggling to think that there's that much up there.
14 But -- and -- and I remember thinking there's a lot of dirt
15 roads, because we mostly traveled dirt county roads. That
16 was about it.

17 Q. Before your involvement in this case, did you have
18 any idea how many birds would be in a particular house?

19 A. No.

20 Q. Of these types of poultry listed here on the
21 top --

22 A. Uh-huh.

23 Q. -- do you have any information about how many, for
24 instance, broilers are in a particular house?

25 A. No. No idea.

Jack Walton

April 8, 2009

18

1 Q. And you don't know how those numbers may vary from
2 poultry type?

3 A. No.

4 Q. Let's keep going with this form. Did you have any
5 instructions about filling out the good, fair or poor
6 section as it relates to structure?

7 A. That was just kind of a -- based on what you saw.
8 It was -- it was pretty easy to determine a good chicken
9 house from -- usually the poors were the ones that weren't
10 up and running and the roofs had collapsed on them and
11 things like that. Whereas the good structures would have a
12 good outside structure, operational curtains on the side,
13 along with the fans on the side were also operational for
14 ventilation. Those would usually get good rankings.

15 Q. Okay. But it was completely subjective to
16 determine between good and fair, is that --

17 A. Yes.

18 MR. ISKANIAN: Object to form.

19 A. Sorry.

20 MR. ISKANIAN: May I interject here for a
21 second. When I do object to the form, you can go ahead and
22 answer. But when she asks the question, you might kind of,
23 if you can, wait a split second and let me object if I need
24 to. Okay?

25 THE WITNESS: Okay.

Jack Walton

April 8, 2009

19

1 Q. (BY MS. HILL) Over on the right-hand side,
2 there's a category of covered litter/cake storage. What
3 does that refer to?

4 A. It is my understanding that a lot of the litter
5 that is disposed of from the chicken house, they put in
6 what is like a shed with no doors. There's a roof and
7 sides, and they will stack -- the farmers will stack the
8 litter in that area. That's what --

9 Q. Do you have any understanding of what cake is?

10 A. No.

11 Q. Do you know -- have any knowledge of what a
12 cake-out is?

13 A. No.

14 Q. You don't -- cannot tell me the difference between
15 a cake-out and a clean-out?

16 A. No.

17 Q. Okay. You just testified that when farmers
18 dispose of litter, what do you mean by dispose of?

19 A. Again, to my knowledge, they push it out of the
20 chicken house once it stacks up in the chicken house and
21 then they move it to this litter shed until they dispose of
22 it another way.

23 Q. Do you have any knowledge about how growers may
24 use litter?

25 A. I know some use it for fertilization.

Jack Walton

April 8, 2009

20

1 Q. And when you say dispose, are you telling the
2 Court that these growers are throwing it away like you
3 dispose garbage?

4 MR. ISKANIAN: Object to form.

5 A. I don't know. It's however they dispose of it. I
6 know some of them spread it for fertilization. Some of
7 them sell it to others to spread, some of them have other
8 people remove. I just know that's where they put it until
9 it is removed.

10 Q. (BY MS. HILL) When you used the term disposed,
11 you mean just move it out of the house?

12 MR. ISKANIAN: Object to form.

13 A. They move it out of the house to another location
14 until they can remove it from their property all together.

15 Q. (BY MS. HILL) But dispose, you're not telling us
16 that a growers not using that for fertilization or some
17 other beneficial purpose?

18 A. No.

19 MR. ISKANIAN: Object to form.

20 THE WITNESS: Sorry.

21 A. No.

22 Q. (BY MS. HILL) So you don't have any opinions
23 about a grower's use of litter, whether that's beneficial
24 or not?

25 MR. ISKANIAN: Object to form.

Jack Walton

April 8, 2009

21

1 A. No.

2 Q. (BY MS. HILL) And -- so when you used the term
3 dispose, you're not telling the Court that these growers
4 are -- are throwing away or disposing of litter like you
5 would garbage?

6 MR. ISKANIAN: Object to form.

7 A. Well, I guess if you could mash your garbage into
8 fertile -- fertilizer and spread it, then yes, that's
9 exactly how I'm using disposed. They are removing the
10 waste from their property in some form, be it spreading or
11 having somebody else take it off, but yes, they're
12 literally throwing it away, so dispose.

13 Q. (BY MS. HILL) But throwing it away also means
14 using in a manner to fertilize?

15 A. Could.

16 MR. ISKANIAN: Object to form.

17 Q. (BY MS. HILL) Or it could mean selling for -- for
18 money?

19 MR. ISKANIAN: Object to form.

20 A. It could.

21 Q. (BY MS. HILL) Okay. So dispose means taking it
22 away and disposing of it out of the house, taking it out of
23 the house. Is that what you mean?

24 A. As far as the litter shed goes, yes.

25 Q. Okay. Dispose just means move it from the litter

Jack Walton

April 8, 2009

22

1 shed? I'm -- I'm a little confused. I'm sorry. Let me
2 ask that again.

3 You said dispose as far as the litter shed is
4 concerned. Tell me what you mean by that.

5 A. I mean, I don't know how they dispose of -- how
6 they get rid of it or dispose of it from the litter shed.
7 I'm sure they do various things with it, from spreading it
8 themselves to selling it to -- I'm not privy to that --

9 Q. Okay.

10 A. -- information.

11 Q. So the action of disposing of is the removal of
12 the litter from the barns to this stacking shed; is that
13 correct?

14 MR. ISKANIAN: Object to form.

15 A. As far as I'm concerned, yes.

16 Q. (BY MS. HILL) That's how you're using the term
17 dispose here today?

18 A. Yes.

19 Q. Thank you. Let's keep going on this form. Down
20 underneath other, can you tell me your understanding of
21 what stacked used litter/cake is?

22 A. My understanding of it is if it's like stacked in
23 a mound in the litter shed or outside the litter shed or
24 wherever it may be stacked. But more than just like a
25 small trace outside the doors from where they had cleaned

Jack Walton

April 8, 2009

23

1 it out. So there's actual -- there's an amount there
2 stacked.

3 Q. And do you know what stacked used cake is?

4 A. No.

5 Q. Below that stacked new litter, what does that
6 refer to?

7 A. I would assume that it is litter that has been
8 recently stacked there.

9 Q. And how is that different from the category above?

10 A. Well, I would imagine stacked used litter has been
11 there for some time and stacked new litter would be fresh
12 litter that has been stacked there.

13 Q. You don't know?

14 A. Well, yeah. There's the difference between used
15 and new. Used would be old litter and new would be new
16 litter is how I --

17 Q. Did you receive any instructions on when to check
18 new litter versus used litter?

19 A. No.

20 Q. Did you make any observations about how long
21 litter was located in a particular observation --
22 particular location?

23 A. I don't recall. It would have been in the notes
24 if I did.

25 Q. So if you're out in the field making an

Jack Walton

April 8, 2009

24

1 observation, how is it that you determined whether to check
2 stacked new or just stacked used?

3 A. I would -- again, we're talking about 2005, so
4 it's been that long, but I wasn't over there as much as the
5 people that I was with. So I would imagine that I would
6 have a discussion with whoever I was with and if they had
7 seen the old litter there for a while and could identify it
8 as such, we would circle used litter. If it was a new
9 pile -- because some of them were over that literally every
10 day. I wasn't over there nearly that much, so I didn't
11 have any idea about what had been and what hadn't been,
12 unless I had gone two or three consecutive days. And I
13 don't ever recall -- remember going more than two days in a
14 row.

15 Q. Do you have any independent recollection of those
16 conversations before filling out stacked new versus stacked
17 used?

18 A. No.

19 Q. Everything would be in the notes?

20 A. Yes.

21 Q. Let's go to the next form. In this Exhibit No. 2,
22 this is marked OK-PL 0001034. Are you familiar with this
23 form?

24 A. Yes.

25 Q. And did you use this form?

Jack Walton

April 8, 2009

25

1 A. I believe so, yes.

2 Q. And what was the purpose of this form?

3 A. Mostly to document our photo frame numbers. We
4 had a digital camera and when we would take pictures, we
5 would do the frame number and it also allowed us to
6 document who was in the vehicle that day and latitude and
7 longitudes of the area that we were in.

8 Q. And was this a form that was used in the project
9 to determine whether poultry operations were active or not?

10 A. Yes.

11 Q. Let's go on to the next page. This is another
12 form we found in the documents. It's marked OK-PL-0005198.
13 Are you familiar with this form?

14 A. Yes.

15 Q. And have you used this form?

16 A. Yes.

17 Q. And what was the purpose of this form?

18 A. Same as before.

19 Q. And what did you do with these forms after you
20 made your observations?

21 A. At the end of the day or --

22 Q. Yes.

23 A. Is that -- okay. We turned them back in to
24 usually Steve Steele, sometimes I would give them to Rod
25 Hummel who would give them to Steve Steele. I never kept

Jack Walton

April 8, 2009

26

1 any of them at the end of the day.

2 Q. Did you ever receive any feedback or comments on
3 your recordkeeping on these forms?

4 A. No.

5 Q. Were you ever told that any adjustments needed to
6 be made on your recordkeeping on these forms?

7 A. Absolutely not.

8 Q. Did you make any oral reports that aren't
9 documented on forms?

10 A. Not that I recall.

11 Q. To speed things up in our prior depositions, I
12 understand that in the morning you'd receive your
13 assignment and forms to go out to a particular location.

14 A. Yes.

15 Q. So you didn't independently make any
16 determinations as to where you would be making your
17 observations?

18 A. No.

19 Q. That was assigned to you by others?

20 A. Yes.

21 Q. And do you know who made those assignments?

22 A. I know that Steve Steele would normally hand
23 everybody out the maps and books and such at the beginning
24 of the day. Who made those assignments to him, I have no
25 idea.

Jack Walton

April 8, 2009

27

1 Q. Okay. Have you had any communications with any
2 other counsel in this case other than Mr. Garren?

3 A. No.

4 Q. Familiar with any of the other attorneys involved
5 in this case?

6 A. No.

7 Q. Have you had communications with the Attorney
8 General's office?

9 A. No.

10 Q. How about do you know Dr. Bert Fisher?

11 A. No.

12 Q. Have you ever heard of Dr. Bert Fisher?

13 A. No.

14 Q. Other than your first meeting with Steve Steele
15 about working on this project, what other communications
16 have you had with Steve Steele on this project?

17 A. Only when he or Rod Hummel would call me and ask
18 me if I could go the following day or the following week
19 with them, that's all.

20 Q. Did Steve or Rod Hummel or anyone else give you
21 any materials to review or look at prior to doing your work
22 in this case?

23 A. For today?

24 Q. No, no. For your work on the project generally.

25 A. No.

Jack Walton

April 8, 2009

28

1 Q. Did anyone give you any documents --

2 A. No.

3 Q. Let me finish.

4 A. Okay.

5 Q. You know what I'm asking. But did anyone give you
6 any documents for today?

7 A. No.

8 Q. Prior to your work on this project, had you ever
9 been to the Illinois River Watershed before?

10 A. Not that I recall. I won't say I've never been
11 there, but no.

12 Q. Other than traveling to the University of Arkansas
13 and back when you were a student --

14 A. Yes.

15 Q. -- had you ever been to the Illinois River before?

16 A. I think I floated the Illinois River once, but
17 I -- again, I can't swear to that.

18 Q. It's not your practice to recreate on the Illinois
19 River?

20 A. No.

21 Q. How about Lake Tenkiller?

22 A. Been to Tenkiller once or twice, but not in the
23 last 20 years.

24 Q. Is there a reason why you haven't been to Lake
25 Tenkiller in the last 20 years?

Jack Walton

April 8, 2009

29

1 A. Because we go to Oolagah.

2 Q. Is there a reason why you prefer Oolagah over Lake
3 Tenkiller?

4 A. We have friends that have boats up there. And
5 it's only like 20 minutes from the house, Oolagah.

6 Q. As you became more familiar with Illinois River
7 Watershed from your work on this project, did you learn
8 where the boundaries of the Watershed were located?

9 A. No.

10 Q. If you saw a map today, could you tell me where
11 the Illinois --

12 A. Probably not.

13 Q. -- River Watershed boundaries were located?

14 A. Probably not.

15 Q. I'll try to get my questions out --

16 A. Sorry. I'm so used to doing it.

17 Q. I know.

18 A. I'm usually the one asking the questions, so I
19 apologize for jumping in.

20 Q. And opposing counsel may want to object some as
21 well, so we'll try to slow down a little bit.

22 A. Okay.

23 Q. And as you testified before, you have no prior
24 experience with the poultry business?

25 A. No, none at all.

Jack Walton

April 8, 2009

30

1 Q. Did you receive any training about poultry
2 operations with -- in connection with your work on this
3 project?

4 A. No.

5 Q. Through your work on this project, did you learn
6 about litter management, such as clean-out practices of
7 growers?

8 A. Maybe a little bit.

9 Q. Did you -- I think you told me earlier you don't
10 know the difference between a full clean-out and -- and a
11 cake-out.

12 A. Correct.

13 Q. Okay. How about the frequency of cleaning out,
14 did you learn anything about how often growers clean out?

15 A. No. About the only thing I really learned was the
16 different methods. I know smaller houses, they would
17 scrape kind of with a shovel whereas maybe bigger houses
18 they'd use a Bobcat-type device and, you know, push out,
19 but that's about my limited knowledge on that.

20 Q. Did you learn about how growers deal with their
21 poultry mortality?

22 MR. ISKANIAN: Object to form.

23 Q. (BY MS. HILL) How they manage the mortality of
24 poultry?

25 A. Are you asking me what they do with the dead

Jack Walton

April 8, 2009

31

1 chickens or --

2 Q. Did you learn what growers do with dead chickens?

3 A. Not specifically, no.

4 Q. Are you aware of different methods that growers
5 use to deal with their dead chickens?

6 A. The -- the one that I'm -- I'm most familiar with
7 is incineration. I know that a lot of them put them in an
8 incinerator and that's just because the incinerator is on
9 the property, so that's all I know about it.

10 Q. Do you know how turkey growers deal with dead
11 turkeys?

12 A. If it's not the same, then no.

13 Q. Okay. Did you observe any composting of
14 mortality?

15 MR. ISKANIAN: Object to form.

16 A. If you're asking if I saw dead chickens, yes, I
17 did.

18 Q. (BY MS. HILL) All right. Did you observe dead
19 chickens being used for compost?

20 A. I'm gonna say no.

21 Q. Did you observe compost piles or composting
22 facilities?

23 A. If I did, it's in the notes.

24 Q. Do you have any independent recollection of
25 composting -- composting done by growers in the Illinois

Jack Walton

April 8, 2009

32

1 River Watershed?

2 A. Not that I recall.

3 Q. How about burial of dead poultry, did you see any
4 of that?

5 A. Not that I recall.

6 Q. If you did, it would be in the notes?

7 A. It would be in the notes.

8 Q. Are you aware of the differences between how
9 chickens and turkeys may be raised?

10 A. Maybe. I'm not real sure what you're asking. I
11 know you have, like, housed chickens and free range
12 chickens and things like that. And but as far as
13 specifics, no.

14 Q. Okay. When you went out and observed these
15 houses, could you tell whether they were for chickens or
16 turkeys?

17 A. No.

18 Q. And I would imagine then you could not tell
19 whether they were brood houses or grow-out houses?

20 A. No idea, no.

21 Q. Okay. Do you have any specific training in
22 Oklahoma environmental laws?

23 A. No.

24 Q. Do you have any knowledge of the statutes and
25 regulations in Oklahoma dealing with the transportation of

Jack Walton

April 8, 2009

33

1 litter?

2 A. No.

3 Q. And here I'm talking about poultry litter.

4 A. No.

5 Q. Do you have any knowledge of the statutes and
6 regulations dealing with certification of land, persons who
7 land apply poultry litter?

8 A. No.

9 Q. Do you have any knowledge of the statutes and
10 regulations relating to land application of poultry litter
11 generally?

12 A. No.

13 Q. Do you have any -- are you familiar with animal
14 waste management plans in Oklahoma?

15 A. No.

16 Q. Have you ever seen an animal waste management
17 plan?

18 A. A, P-L-A-N, plan, or P-L-A-N-T, plant.

19 Q. An animal waste management plan, P-L-A-N?

20 A. No.

21 Q. Are you familiar with any Arkansas environmental
22 laws?

23 A. No.

24 Q. And are you familiar with any Arkansas statutes or
25 regulations dealing with the transportation of poultry

Jack Walton

April 8, 2009

34

1 litter?

2 A. No.

3 Q. Are you familiar with any Arkansas laws addressing
4 the land application of litter generally?

5 A. No.

6 Q. Are you aware of any Arkansas laws addressing the
7 application of any kind of nutrients on the ground?

8 A. No.

9 Q. And have you ever seen a nutrient management plan?

10 A. No.

11 Q. Do you know what a nutrient management plan is?

12 A. Not a clue.

13 Q. Do you know what an animal waste management plan
14 is?

15 A. Not a clue.

16 Q. Okay. Have any scientific training, then, in
17 nutrients that -- in -- nutrients?

18 A. No.

19 Q. Okay. Any training in phosphates versus
20 phosphorous?

21 A. No.

22 Q. Any scientific training in the fate and transport
23 of nutrients?

24 A. No.

25 Q. Have any scientific training in application rates

Jack Walton

April 8, 2009

35

1 of nutrients on -- on the ground?

2 A. No.

3 Q. Have you ever used the term over application?

4 A. No.

5 Q. Do you know what that refers to?

6 A. Just from basic, I mean, the word
7 over-application, not in relation to chicken litter or
8 anything else, though.

9 Q. Would you be able to identify over-application
10 from poultry litter?

11 A. I know that when they put a lot of application
12 down, it will burn the grass versus making it greener. It
13 will kill it. So professionally no, I could not tell you
14 what over-application was. I could give a layman's opinion
15 and that is all.

16 Q. Did you see any burning of grass occur in your
17 observation?

18 A. Yes. And mostly you can see it in the aerial
19 photographs. It's more difficult to detect from eye level,
20 you know, driving in a car, but mostly I picked it up in
21 the aerial photographs. You could see the circles where
22 they would apply litter and turn around and drive back to
23 the other end, apply litter, turn around and drive back to
24 the other end.

25 Q. And you saw this when you observed an aerial

Jack Walton

April 8, 2009

36

1 photograph; is that your testimony?

2 A. Yes.

3 Q. Did you go up in the plane at all?

4 A. No.

5 Q. And where did you obtain these aerial photographs?

6 A. I believe they were given to me as a team at the
7 beginning of the day by Steve Steele.

8 Q. Okay. So did you do any investigation of these
9 areas of over-application of -- that you have described as
10 having burnt areas?

11 A. No. You could just see them in the picture. We
12 didn't go there and specifically investigate if there was
13 over-application.

14 Q. Okay. So you're not aware of the crop that was
15 being grown in that area?

16 A. No.

17 Q. And you -- you don't know what type of grass might
18 have been used there?

19 A. No.

20 Q. And you didn't do any sampling in the areas?

21 A. No.

22 Q. Did -- were you involved in any sampling
23 whatsoever?

24 A. Never.

25 Q. Did you see any taking place?

Jack Walton

April 8, 2009

37

1 A. No.

2 Q. So these burned areas -- do you recall seeing
3 any -- any of these areas of perhaps burnt grasses or crops
4 from the ground?

5 A. No.

6 Q. Okay. So you didn't independently observe this
7 when you -- with your own eyes in the Watershed, you just
8 saw it in the pictures?

9 A. In aerial photographs, yes. We didn't ever go on
10 someone's property, so it would have been very difficult
11 to, you know, walk up on the grass and see exactly what it
12 was like. We tried -- we stayed on the main roads and the
13 country roads and all of that.

14 Q. And those were your instructions; right?

15 A. Yes.

16 Q. I may have asked you this already. Did you talk
17 to any growers while you were out in the Watershed?

18 A. No, I personally didn't.

19 Q. Were you with anyone when they talked --

20 A. No.

21 Q. -- spoke with a grower?

22 A. No.

23 Q. I'll try to get the question out.

24 A. Sorry.

25 Q. We're trying to get through this quickly.

Jack Walton

April 8, 2009

38

1 A. Sorry.

2 Q. How about, did you follow any litter trucks?

3 A. Yes.

4 Q. Okay. Who did you follow?

5 A. I don't recall.

6 Q. Could you identify the trucks?

7 A. When we were following them or now?

8 Q. Yes. Were there -- were there signs or markings
9 on the trucks that indicated whether they were with a
10 particular company?

11 A. On some of the trucks, I believe there were, yes.
12 And that's all in the notes on -- for that specific day.

13 Q. Do you have any independent recollection of any
14 litter hauling companies who you may have watched in the
15 Watershed?

16 A. No, I don't.

17 Q. So whatever is in the notes --

18 A. That is correct.

19 Q. Did -- did you have occasion to speak with any
20 litter haulers in the watershed?

21 A. No.

22 Q. Did you have occasion to speak with anyone that
23 was involved in the poultry industry in any way when you
24 were in the Watershed?

25 A. Not that I recall.

Jack Walton

April 8, 2009

39

1 Q. All right. Did you do any other work on this
2 project, other than the observations that were made in the
3 Illinois River Watershed?

4 A. No.

5 Q. Did you serve any subpoenas in this case?

6 A. No.

7 Q. You testified earlier that you on occasion
8 followed litter trucks. How far would you follow those
9 litter hauling trucks?

10 A. To my recollection, most of -- I should say most
11 of, I'll bet I personally when I was with the others,
12 because I wasn't driving, I was always a passenger, so
13 probably maybe less than 10 at the -- at the most. And
14 normally they would pick up the litter and go to spread
15 within a mile or two, so we never followed them very far.

16 Q. Did you record the mileage of -- from the pickup's
17 location to the application site?

18 A. I don't recall.

19 Q. You don't have any independent recollection of
20 making that recording?

21 A. No. I did it so infrequently. Like I said
22 earlier, most of my time over there was spent finding the
23 houses and determining if they were active or not.

24 Q. Did you note any large -- large trucks hauling
25 litter long distances?

Jack Walton

April 8, 2009

40

1 A. If I did, it's in the notes, but I don't
2 independently recall any.

3 Q. Do you have any knowledge of BMP, Inc.?

4 A. No.

5 Q. Do you have knowledge of any company that hauled
6 litter long distances?

7 A. No.

8 Q. And was it your testimony earlier that you
9 observed land application of litter on one occasion?

10 A. That I recall, yes.

11 Q. Okay. And did you do anything to measure the rate
12 of application?

13 A. No.

14 Q. And you testified earlier that you can't -- did
15 not determine the type of litter that was being applied?

16 A. No.

17 Q. Did you measure the distance from -- from that
18 land application location to any water body?

19 A. No.

20 Q. Did you make any notes as to land type or geology
21 in the area?

22 A. Not that I recall, but if I did it's in the notes.

23 Q. And you didn't test any of the soil?

24 A. No.

25 Q. Did not collect any samples on the edge of the

Jack Walton

April 8, 2009

41

1 fields?

2 A. No.

3 Q. Did you observe and note transportation of hay in
4 or out of the IRW? IRW -- I'm sorry. I'm referring to
5 Illinois River Watershed.

6 A. Not that I recall. Probably did, because it is
7 such a farmers' area, but I don't specifically remember
8 any.

9 Q. Do you remember making any specific notes about
10 land available for cattle and grazing?

11 A. No.

12 Q. Did your instructions ever include documenting
13 stream banks?

14 A. No.

15 Q. How about cattle?

16 A. No.

17 Q. Did you have the occasion to see a lot of cattle
18 in the Watershed?

19 A. Again, being farmland in Northwest Arkansas, I'm
20 sure there were cattle there, but we weren't -- I wasn't
21 looking for cattle. I was looking for chicken houses.

22 Q. Did you ever receive any instructions to observe
23 or document the recreational use in the area?

24 A. No.

25 Q. Did you have any instructions to observe and

Jack Walton

April 8, 2009

42

1 document any septic systems in the area?

2 A. No.

3 Q. Did you ever receive any instructions to observe
4 and document wastewater treatment facilities in the area?

5 A. No.

6 Q. Did you have any instructions to observe and
7 document commercial fertilizer use in the area?

8 A. No.

9 Q. Did you have any instructions to observe and
10 document urban run-off in the area?

11 A. No.

12 Q. Did you document any urban run-off in the area?

13 A. No.

14 Q. Do you know what's referred to as urban run-off?

15 A. No.

16 Q. Do you have any idea what run-off of a field is?

17 A. I would assume it's like rain run-off into a water
18 area once. And the -- whatever was in that field, be it
19 litter or fertilizer or whatever, that it runs off in --
20 kind of like the run-off in your yard at home.

21 Q. Did you observe any urban run-off or agricultural
22 run-off?

23 A. Not that I recall.

24 Q. You weren't out there in the rain, were you?

25 A. Maybe once, maybe. And I don't even remember if

Jack Walton

April 8, 2009

43

1 it started raining after we were already there or if it was
2 raining when we got there. I just remember driving through
3 the muddy roads.

4 Q. Steve Steele testified that if it was a rainy day,
5 that you generally stayed home. Is that your recollection?

6 A. Yes.

7 Q. And on this day that you ran into some rain or --
8 or got a little bit wet and muddy, what were you doing that
9 day; do you recall?

10 A. Again, the majority of my time over there was
11 spent looking for active and inactive chicken houses. I
12 would assume that.

13 Q. So you don't believe that you -- you observed any
14 land application on this day that you saw -- had rain?

15 A. No, I don't think so.

16 Q. And do you have any independent recollection of
17 observing any -- any run-off from any fields?

18 A. No.

19 Q. We can go through some notes later, but can you
20 give me a ballpark of how many times you think you were out
21 there making these observations?

22 A. If I had to guess, probably 20, maybe.

23 Q. In all of your time in the Watershed, did you
24 observe anyone breaking the law?

25 MR. ISKANIAN: Object to form.

Jack Walton

April 8, 2009

44

1 A. Well, we weren't there to determine legality, so I
2 really don't know. They could have been and I -- I did not
3 know the -- whatever law they were breaking, so --

4 Q. (BY MS. HILL) In your 20 plus years as a Tulsa
5 police officer, you can't tell me whether you saw someone
6 breaking a law out there when you were making your
7 observations in the Watershed?

8 MR. ISKANIAN: Object to form.

9 A. My -- I -- not -- not environmental law, no, I
10 can't.

11 Q. (BY MS. HILL) I -- I asked about law generally.

12 A. Oh, in general? Oh, if you're talking about
13 somebody not using their indicator when they turned onto a
14 county road, sure, I can tell you that.

15 Q. Did you observe any contract growers doing
16 anything that looked like a violation of the law to you?

17 MR. ISKANIAN: Object to form.

18 A. Again, we weren't there to determine legality.
19 Was there something that was blatantly obvious? No. But I
20 don't know, again, all the laws that pertain to poultry and
21 turkeys and litter and -- that's not my area of expertise.

22 Q. (BY MS. HILL) I'm gonna skip around and give you
23 Exhibit No. 4. We'll come back to 3.

24 A. All right.

25 (Exhibit No. 4 was marked.)

Jack Walton

April 8, 2009

45

1 Q. I'm gonna hand you what the court reporter has
2 marked as Exhibit No. 4. Go over a few questions with you
3 about these forms.

4 A. Okay.

5 Q. I'll represent to you these are the forms I found
6 with your name on them that related to any Cargill notes --
7 that had any Cargill notation on them.

8 A. Okay.

9 Q. The first page is an observation from June 16th,
10 2005; is that correct?

11 A. Yes.

12 Q. Were you involved in this observation?

13 A. Yes.

14 Q. Did you make the notes on this observation?

15 A. Yes.

16 Q. Do you have any independent recollection of this
17 observation of the Wamoth Farm noted here on Page
18 OK-PL-000796?

19 A. No.

20 Q. Did you make the notes on this form?

21 A. Yes, I did.

22 Q. I'm gonna hand you the pictures -- also I only
23 have one copy -- that were associated with that note.

24 A. Okay.

25 Q. And take a look at those and then I'll ask you

Jack Walton

April 8, 2009

46

1 some questions.

2 A. Okay.

3 Q. Did you observe that this was an active operation?

4 A. Yes. That's what the notes say.

5 Q. And your second handwritten note under notes,
6 fresh litter track from door area. What does that refer
7 to?

8 A. Are these photos labeled as far as frame number?

9 Q. We had to match them up. I'll represent to you
10 that I believe the second photo here --

11 A. Okay.

12 Q. -- which is marked OK-PL-0008941 is associated
13 with your second note there.

14 A. Okay. Then in the photo, you can just see the
15 very, very edge of the door here on the right frame --

16 Q. Uh-huh.

17 A. -- and then the fresh -- what appears to be fresh
18 litter trailing out from that door. That would be what the
19 fresh litter track from door area would be.

20 Q. Okay. Does it look like they were actively
21 cleaning out or removing litter from this operation?

22 A. I don't know. It doesn't --

23 Q. If Mr. Hummel testified earlier today that the
24 litter was removed from this area, do you have anything
25 that contradicts his recollection?

Jack Walton

April 8, 2009

47

1 A. The litter as in a litter stack was removed from
2 the area or --

3 Q. Or this picture that you're looking at -- at 8941
4 shows where litter was removed from -- from a house.

5 MR. ISKANIAN: Object to form.

6 A. And your question was, do I have anything to
7 contradict that information?

8 Q. (BY MS. HILL) Yes.

9 A. No, I don't.

10 Q. You don't have any independent recollection of
11 this observation?

12 A. No. And again, this could -- he could have been
13 there the day before and there was a stack of litter and
14 then I rode with him the next day and it was gone, so I
15 don't know.

16 Q. You don't know what's on this track coming out of
17 this house, do you?

18 A. No.

19 Q. And looking at these pictures in this note, do you
20 note anything improper happening or taking place on this
21 land?

22 MR. ISKANIAN: Object to form.

23 A. Again, I don't know.

24 Q. (BY MS. HILL) Is there anything unusual about the
25 observations made here on the Wamoth Farm?

Jack Walton

April 8, 2009

48

1 MR. ISKANIAN: Object to form.

2 A. Well, the only thing that makes me believe this is
3 litter is usually the chicken litter would be in a darker
4 color than mud or the area around it. And there was also a
5 smell. Usually I would document the smell, but I could
6 have done that with just fresh, fresh litter, so just the
7 apparent chicken litter coming out from the door.

8 Q. (BY MS. HILL) And again, you don't know whether
9 that is chicken litter, turkey litter or something else?

10 A. No, I don't.

11 Q. Anything -- no -- other than what we've discussed
12 relating to this picture No. 8941, that is noteworthy about
13 your observations of the Wamoth Farm?

14 MR. ISKANIAN: Object to form.

15 A. No.

16 Q. (BY MS. HILL) Okay. I'll take the pictures.

17 A. Okay.

18 Q. Let's turn the page. The next page of this
19 exhibit is OK-Pl-0001935. Were you involved in this
20 observation?

21 A. Yes.

22 Q. Did you make the notes on this observation?

23 A. Yes.

24 Q. Do you have any independent recollection of this
25 observation?

Jack Walton

April 8, 2009

49

1 A. No.

2 Q. Anything unusual or out of the ordinary about your
3 notes on this observation?

4 A. No.

5 Q. Did you note any improper activity in this
6 observation?

7 MR. ISKANIAN: Object to form.

8 A. No.

9 Q. (BY MS. HILL) Let's go on to the next page.
10 That's OK-PL-0002582. Were you involved in this
11 observation?

12 A. Yes.

13 Q. Did you make the notes on this observation?

14 A. Yes.

15 Q. You noted the structures were in good condition?

16 A. Yes.

17 Q. Do you have any independent recollection of this
18 observation, other than what is contained in the note here?

19 A. No.

20 Q. Do you recall whether you ever went back to the
21 Rutherford Farm?

22 A. I don't recall.

23 Q. If you did, it would be in a note; is that
24 correct?

25 A. I would think so, yes.

Jack Walton

April 8, 2009

50

1 Q. Is there anything unusual that you noticed about
2 the Rutherford Farm here on Page 2582?

3 A. No.

4 Q. And you did not note anything improper?

5 MR. ISKANIAN: Object to form.

6 A. No.

7 Q. (BY MS. HILL) Let's go on to the next page, 2607.
8 Were you involved in this observation?

9 A. Yes.

10 Q. And what did you observe?

11 A. That there was no public access to the farm and we
12 took a picture of the sign, which I'm sure denoted it as a
13 turkey farm, which is why I wrote turkey farm. And we
14 didn't -- we didn't encroach on private property to try to
15 get a photo of a specific building. We stayed on public
16 access.

17 Q. So you really didn't have any observation here; is
18 that correct?

19 A. No. I'm pretty sure we -- we took a photo from an
20 aerial photograph, again, that, you know, pin-pointed an
21 area and then we went to that area. And since we couldn't
22 get close to it, we took a picture of the sign showing that
23 it was a turkey farm and moved on.

24 Q. Okay. Let's go on to the next page, 2652. Were
25 you involved in this observation?

Jack Walton

April 8, 2009

51

1 A. Yes.

2 Q. And did you make the notes on this observation?

3 A. Yes.

4 Q. And what are you observing in this -- this note?

5 A. Again, that it was a turkey farm and that there
6 was just a partial view of it.

7 Q. Do you have any independent recollection of this
8 observation?

9 A. No.

10 Q. Anything unusual about the activities you noted on
11 this farm?

12 A. No.

13 Q. Let's go on to the next page. Were you involved
14 in the observation noted here at Page 2703?

15 A. Yes.

16 Q. Did you make the notes on this observation?

17 A. Yes.

18 Q. Do you have any independent recollection of this
19 observation?

20 A. No.

21 Q. Generally what did you observe here?

22 A. That it appeared active with silos and propane
23 tanks and that there's a litter shack and a spreader.

24 Q. Did you note anything unusual on the Ginn Farm?

25 A. No.

Jack Walton

April 8, 2009

52

1 Q. Did you note anything improper?

2 MR. ISKANIAN: Object to form.

3 A. Again, not knowing all the litter disposal laws, I
4 wouldn't know what was proper and what was improper.

5 Q. (BY MS. HILL) So we're not gonna get any
6 testimony from you at any time about how litter should be
7 used, disposed or placed?

8 A. No. Because that wasn't my job of going over
9 there.

10 Q. Okay. Let's go on to the next page, 3712.

11 A. Okay.

12 Q. You were involved in this observation; is that
13 correct?

14 A. Yes.

15 Q. And did you make the notes on this observation?

16 A. Yes.

17 Q. Do you have any independent recollection of this
18 observation?

19 A. No.

20 Q. If you returned to Swearingen Farm at another
21 time, would there be a note on it?

22 A. There may not be a note on this form, but there
23 would be a note somewhere on a form that we returned to it.

24 Q. Do you recall returning to the Swearingen Farm?

25 A. No.

Jack Walton

April 8, 2009

53

1 Q. Is there anything unusual about the activities you
2 noted at the Swearingen Farm on September 1st, 2005?

3 MR. ISKANIAN: Object to form.

4 A. No.

5 Q. (BY MS. HILL) Page 3370, were you involved in
6 this observation?

7 A. Yes.

8 Q. Did you make the notes on this observation?

9 A. Yes.

10 Q. Do you have any independent recollection of this
11 observation?

12 A. No.

13 Q. Do you recall ever going back to the Eddleman
14 Farm?

15 A. No.

16 Q. Is there anything unusual about the activities you
17 noted at the Eddleman Farm on September 16th, 2005?

18 A. No.

19 MS. HILL: Mark this Exhibit 3.

20 (Exhibit No. 3 was marked.)

21 Q. This one's Exhibit 3. I'm gonna hand you what the
22 court reporter has marked as Exhibit 3. Would you take a
23 few minutes and look through this exhibit.

24 A. Okay.

25 Q. On the second page of this exhibit, 5666 --

Jack Walton

April 8, 2009

54

1 A. Yes.

2 Q. -- does it indicate that you're involved in this
3 observation?

4 A. Yes.

5 Q. And you made the notes to this observation?

6 A. Yes.

7 Q. Who did you make this observation with?

8 A. Steve Steele.

9 Q. Okay. And the first page of this exhibit, were
10 you involved in the creation of these maps?

11 A. No.

12 Q. Have you ever seen those before?

13 A. Maybe. I saw a lot of aerial photographs. This
14 could have been one of them, but no, I don't recall it.

15 Q. In your note on Page 5661 --

16 A. Yes.

17 Q. -- when you note that there was litter being
18 dumped or dumping litter --

19 A. Yes.

20 Q. -- what are you referring to?

21 A. That a truck was dumping litter from the truck and
22 spreading -- I'm assuming. I'd have to look at the picture
23 that I was referring to on this, but that it was spreading
24 it from a rear spreader on the truck.

25 Q. Steve testified yesterday that when he said

Jack Walton

April 8, 2009

55

1 dumping, that means it came from a truck that couldn't be
2 used to spread, it was -- it was moving litter. Does that
3 comport with your memory?

4 A. Maybe, sure.

5 Q. That works?

6 A. Yeah.

7 Q. You don't have any -- okay.

8 A. He was over there so much more, I'm sure he
9 probably uses a different terminology than I do, so --

10 Q. So here can you tell whether you were observing
11 land application or the movement of litter or land
12 application versus just the movement of litter?

13 A. Is that just in the pages back to the next
14 notation where I took -- or the next page I took notes or
15 all of these pictures compared to that one?

16 Q. I think on this first note --

17 A. Because on the first note, I only have three
18 pictures.

19 Q. Right.

20 A. Right.

21 Q. And it looks like there are three pictures
22 following that. I'll represent to you that we matched up
23 the photo frame numbers and found these three pictures and
24 believe that these relate to your note on 5666, the three
25 notes that follow that. So the note on the Cargill farm on

Jack Walton

April 8, 2009

56

1 5666 has three pictures associated with it, the three
2 pictures following.

3 A. Okay.

4 Q. And -- so I'm asking about these three pictures.
5 Here are you documenting the movement of litter or the land
6 application of litter in Note 5666? Just 5666 and the
7 three pictures associated with it.

8 A. Okay. Without remembering this specifically, I
9 will go with Steve's definition of moving of litter,
10 because again, I'm -- there's no way for me to know that
11 these pictures are matched up to the appropriate notations
12 because the photo files are not stamped on there in any
13 way. So I can't directly compare photo frame with 5577
14 with the first picture and know that that is the picture I
15 took to go with that notation.

16 Q. But there are no pictures or notes on Page 5666
17 relating to land application; is that correct?

18 MR. ISKANIAN: Object to form.

19 Q. (BY MS. HILL) Do you see any note relating to
20 land application on 5666?

21 A. No.

22 Q. Going on to 5661. Is this the one occasion that
23 you had to observe land application that's described here
24 on 5661?

25 A. Actually, I think I said that I remember --

Jack Walton

April 8, 2009

57

1 specifically remember one occasion and if there were more,
2 that they would be in the notes. So I'm assuming this was
3 the one that was in the notes, because I was with Steve
4 Steele and the one I specifically remember, I was with
5 Shane Tuell.

6 Q. Okay. So you don't have any independent
7 recollection of what is noted here on Page 5661?

8 A. No.

9 Q. And if you went back to this location at a later
10 date, there would be a note about it?

11 A. Yes.

12 Q. And the pictures following Page 5661, does that do
13 anything to refresh your recollection about what you
14 observed on 5661?

15 A. No. Other than just there was a spreader truck
16 out in the field. It appeared to be dumping -- or I'm
17 sorry -- spreading litter.

18 Q. Did you receive any materials about calibrating
19 litter trucks?

20 A. No.

21 Q. Did you receive any training or materials on
22 litter application rates?

23 A. No.

24 Q. Is there anything, I believe you used the term
25 earlier, blatantly obvious or unusual about the notes here

Jack Walton

April 8, 2009

58

1 we see in Exhibit No. 3?

2 A. No.

3 MS. HILL: Mr. Walton, I'm gonna take a quick
4 break and look at my notes and see where we are.

5 THE WITNESS: Okay.

6 THE VIDEOGRAPHER: We're off the record at
7 2:34 p.m.

8 (Break was taken from 2:34 p.m. to 2:39 p.m.)

9 THE VIDEOGRAPHER: This is the start of Tape
10 2. We are back on the record at 2:39 p.m.

11 Q. (BY MS. HILL) I just have a few more questions
12 for you.

13 A. Okay.

14 Q. When you first became involved in this project,
15 what were you told about the lawsuit?

16 MR. ISKANIAN: Object to form.

17 A. Almost nothing.

18 Q. (BY MS. HILL) Do you know whether the lawsuit had
19 been filed?

20 A. I have no idea.

21 Q. Have you done any independent research about the
22 lawsuit since your involvement --

23 A. No.

24 Q. -- in this project?

25 A. No. Sorry.

Jack Walton

April 8, 2009

59

1 Q. Do you read the Tulsa World?

2 A. Yes.

3 Q. Did you read the articles about this lawsuit in
4 the Tulsa World?

5 A. Usually not, no.

6 Q. Me, neither.

7 A. We only get the paper on Thursday, Friday --
8 Thursday, Friday, Saturday and Sunday. So what comes
9 before that, I don't get the Tulsa World, but usually not.

10 Q. Okay. From your work on this project, do you have
11 any independent recollection of any farm operations that
12 were associated with Cargill?

13 A. No.

14 Q. Do you have any knowledge or recollection of any
15 person associated with Cargill in any way from your work on
16 this project?

17 MR. ISKANIAN: Object to form.

18 A. No.

19 MS. HILL: I'm gonna pass the witness.

20 EXAMINATION

21 BY MS. LLOYD:

22 Q. You mentioned that you had seen some aerial photos
23 with what you described as burn circles, spots on them.

24 A. Yes.

25 Q. Did you see poultry litter being applied to those

Jack Walton

April 8, 2009

60

1 areas?

2 A. Personally, no.

3 Q. Did you investigate whether -- did you investigate
4 how much, if any, poultry litter had been applied on those
5 areas?

6 A. No.

7 Q. Did you investigate whether commercial fertilizer
8 had been applied on those areas?

9 A. No.

10 Q. Do you have any recollection of farm operations
11 associated with George's, Inc. from your observations?

12 A. No.

13 Q. Is it fair to say you're unable to testify that
14 you witnessed any unlawful activity by George's, Inc.?

15 MR. ISKANIAN: Object to form.

16 A. It's fair to say that if there was illegal
17 activity, that I didn't know whatever laws as far as
18 poultry and litter go, that I knew that it was illegal.
19 There could have been illegal activity that I did not
20 recognize, but it's fair to say that I didn't know it was
21 illegal if it was occurring.

22 Q. (BY MS. LLOYD) Did you witness any activity by
23 George's, Inc. or its representatives or contract growers
24 during your time there?

25 A. I'm sure I did.

Jack Walton

April 8, 2009

61

1 Q. Do you have any recollection of that at this time?

2 A. No. It would be in the notes if I had -- if I
3 noticed any activity, legal or illegal. What I'm trying to
4 say is it could have -- something that I saw could have
5 been illegal, but I didn't know it was illegal. Do you see
6 what I'm saying? I'm not trying to be difficult.

7 Q. No. I see what you're saying. So you cannot
8 testify that you saw any unlawful activities on your
9 observations; is that correct?

10 MR. ISKANIAN: Object to form.

11 A. No, I cannot testify that I saw any unlawful
12 activity because I didn't know it was unlawful if it was.
13 So I see what you're saying, but I don't know if it was
14 illegal or not.

15 Q. (BY MS. LLOYD) Did you see any activity that you
16 think might be illegal?

17 MR. ISKANIAN: Object to form.

18 A. Possibly.

19 Q. (BY MS. LLOYD) As a police officer, do you feel
20 an obligation to report illegal activity when you see it?

21 MR. ISKANIAN: Object to form.

22 A. Well, we -- we weren't there to determine
23 legality. We were just there to document.

24 Q. (BY MS. LLOYD) I know. That wasn't my question.

25 A. And also, it's the State of Arkansas, not the

Jack Walton

April 8, 2009

62

1 State of Oklahoma. I have no jurisdiction as a police
2 officer there.

3 Q. I understand that. But as -- as a police officer,
4 do you feel an obligation to report illegal activity when
5 you see it, regardless of whether you're on duty or off
6 duty or within your jurisdiction?

7 A. Yeah. I think we did that with our notes, because
8 I assumed it would go to a higher authority based on what
9 we were doing. So I kind of felt like we did report it.
10 Now again, I don't know enough about the -- the laws as far
11 as that area is concerned, to know whether it was legal or
12 illegal. It could be perfectly legal to go out and spread
13 chicken manure as fertilizer. I don't know, you know,
14 because I don't know rates, you know, just spread rates and
15 all of that stuff, so I don't know if what I saw was
16 illegal or not.

17 Q. Okay. So you have no knowledge of laws regarding
18 the spreading of poultry litter?

19 A. Correct.

20 MR. ISKANIAN: Object to form.

21 THE WITNESS: Sorry.

22 A. Correct.

23 MS. LLOYD: Okay. Thank you. No further
24 questions.

25 EXAMINATION

Jack Walton

April 8, 2009

63

1 BY MR. MIRKES:

2 Q. Hello, sir. My name is Craig Mirkes. We met
3 earlier. I represent Peterson Farms. And I'll keep my
4 questions pretty brief, I hope. I'm gonna go back through
5 the testimony and kind of clean up some areas that I didn't
6 fully understand and want to explore a little bit more.

7 A. Okay.

8 Q. Earlier kind of in passing when -- when you were
9 asked about any -- if you had any ag experience, you said
10 no. But you did mention kind of in passing that your uncle
11 had a sod farm; is that correct?

12 A. Yes, down in Southern Oklahoma. I never worked on
13 it or anything like that, but --

14 Q. Where at in Southern Oklahoma?

15 A. It was south of -- it was south of Muskogee, but I
16 don't recall the town name. You had to go through
17 Stringtown to get there, I remember that.

18 Q. Did you ever visit the sod farm?

19 A. Yes.

20 Q. Did you visit the sod farm when the sod farm was
21 being fertilized?

22 A. No.

23 Q. Do you know if your uncle ever used poultry litter
24 to fertilize his sod?

25 A. I have no idea.

Jack Walton

April 8, 2009

64

1 Q. You were asked earlier if you had any
2 environmental training with respect to your job as a police
3 officer.

4 A. Yes.

5 Q. And you only mentioned Hazmat training.

6 A. Yes.

7 Q. What does Hazmat stand for?

8 A. Hazardous materials.

9 Q. When you went out into the Watershed, you said you
10 saw -- that you remembered only one litter application, but
11 then we looked at a picture and -- and so there was at
12 least two. What did you -- what would you wear when you
13 went out to the Watershed generally?

14 A. Just comfortable clothes, either slacks and a
15 shirt, blue jeans and a T-shirt, whatever you would wear
16 normally every day.

17 Q. Did the State ever issue you any kind of Hazmat
18 clothing?

19 A. No.

20 Q. Did the State ever tell you that poultry litter is
21 a hazardous material?

22 A. Not to my knowledge.

23 Q. Can you explain what you mean by not to your
24 knowledge?

25 A. They didn't tell me specifically. I don't know

Jack Walton

April 8, 2009

65

1 what they have told the others that went out there.

2 Q. Is it your understanding that poultry litter is a
3 hazardous material?

4 A. I don't know.

5 Q. If the State considered it a hazardous material,
6 would you have liked for them to have told you -- tell you
7 that if you were investigating in the Watershed?

8 MR. ISKANIAN: Object to form.

9 A. Again, we never came in direct contact with the
10 chicken litter, so I would say, yes, I would like to know,
11 but I don't think it was extremely important because we
12 weren't physically dealing with it, you know, like with our
13 hands and stuff.

14 Q. (BY MR. MIRKES) Sure. Yesterday in -- when we
15 were talking to Mr. Steele, I kind of went through this
16 same line of questioning and I think it's pretty obvious he
17 spent a lot more time in the Watershed than you did.

18 A. Yes.

19 Q. One of the instances he recollected of watching
20 spreading litter, he was hit by litter being spread from a
21 truck. Was that an incident that you were with him or --
22 or do you recall that?

23 A. No. I think I would remember that and I don't
24 recall that.

25 Q. What was the closest you ever came to spreading

Jack Walton

April 8, 2009

66

1 activity, as far as distance?

2 A. In some of the photos that we have seen here
3 today, it was about as close -- maybe following a truck
4 from Point A to Point B, but never hands on, so --

5 Q. And just to be clear, are you represented by
6 counsel today?

7 A. Yes.

8 Q. He is your attorney?

9 A. No, he is not my -- I'm sorry. I am not
10 represented by counsel. I believe the State has someone
11 here to be with me to object to the questions, but I do not
12 have a personal attorney.

13 Q. He's objecting on behalf of the State, not on
14 behalf of you?

15 MR. ISKANIAN: Object to form.

16 Q. (BY MR. MIRKES) That question is to you.

17 A. I'm gonna say yes, he is.

18 Q. Were you instructed when -- whenever you met with
19 Mr. Garren, did he say anything about an attorney being
20 here today?

21 A. Yes.

22 Q. For the State?

23 A. I don't recall how he put it. He just said they
24 would -- an attorney would be here.

25 Q. In your opinion, what is the difference between

Jack Walton

April 8, 2009

67

1 litter spreading and litter dumping? Because you've used
2 both terms in this deposition today.

3 A. Again, this is my personal --

4 Q. That's all I'm asking for.

5 A. -- opinion only. Dumping would be taking a truck
6 load, like a dump truck and dumping the entire pile into
7 one area or one place. Spreading is the same dump truck,
8 but you are literally throwing the litter out from the
9 truck and spreading it over a -- a bigger area than just
10 dumping it and leaving it. Does that make any sense?

11 Q. It makes complete sense. And I think I would
12 describe it, I guess, in the same way semantically. The --
13 so in the pictures we were just looking at in the last
14 exhibit, that was litter spreading; is that correct? I
15 mean, that was a litter spreader --

16 A. Yes, in the --

17 Q. -- that's not litter dumping?

18 A. In the last series of pictures, yes, that was a
19 litter spreader.

20 Q. And that was Exhibit 3, so where it says litter
21 dumping on the form, I mean, that was just really
22 mislabeled or your opinion changed or the way you've used
23 these terms changed between then and now; is that accurate?

24 MR. ISKANIAN: Object to form.

25 A. Again, I'm gonna -- not to be difficult, but I'm

Jack Walton

April 8, 2009

68

1 going back to what I said earlier. There's no way for me
2 to know that the pictures that I took with those notations
3 are these pictures because they're not labeled in any way.
4 So I'm not trying to evade your question. I'm just saying
5 that based on my -- what we just discussed about dumping
6 and spreading, yes, spreading is when it comes out of the
7 back of a truck in a large area. So I don't know.

8 Q. (BY MR. MIRKES) I'll represent to you that your
9 observation about the pictures being difficult to match up
10 to the sheets is our same observation. And it -- I know
11 the paralegals in my office went to great pains to put
12 those pictures together and that's the way the State
13 produced them to us. So to the extent that those pictures
14 are incorrect, the only thing we can do is present them to
15 the people that took the photographs, which is the
16 investigators, and have them identify them with respect to
17 the investigative report. Because you're the only
18 person -- you and whoever you're with are the only persons
19 in the universe that can really match those up.

20 A. Yeah. I'm not accusing you of giving me --

21 Q. Oh, yeah.

22 A. -- bad, you know, pictures with different
23 information or anything. I'm just saying without -- at the
24 time I took the pictures, I could directly match them to
25 the form that I put them on. Now, that is more difficult

Jack Walton

April 8, 2009

69

1 for me to do because literally I'm sure thousands of
2 pictures were taken, not necessarily by me, but by
3 everybody combined, so --

4 Q. I'm gonna had you what will be marked as --

5 THE REPORTER: 5, I think.

6 MS. HILL: Yeah, 5.

7 (Exhibit No. 5 was marked.)

8 A. Okay.

9 Q. (BY MR. MIRKES) I will apologize to Counsel that
10 their copies do not have color photographs attached, only
11 the witness does.

12 And -- and -- and you'll see in the bottom
13 right-hand corner above the Bates number, we have a frame
14 number marked. See like, for instance, on Page 2, do you
15 see down on Page 2 where it says Frame 908?

16 A. Yes.

17 Q. And to the --

18 A. Okay. I see.

19 Q. And so in -- in order to try and help this process
20 along, and like I said earlier, we -- we can't be 100
21 percent sure that's accurate. And since you were a party
22 to it, if you see something you think is inaccurate, I'd
23 like you to go ahead and point that out to me.

24 A. Okay.

25 Q. Thank you, sir. Have you had a chance to look

Jack Walton

April 8, 2009

70

1 through that?

2 A. Yes.

3 Q. Okay. And this appears to be an investigation
4 report done on 6/16/2005; is that correct?

5 A. Yes.

6 Q. Were you a party as an observer to this
7 investigation?

8 A. Yes.

9 Q. And this is -- it has written down here the
10 individual's name is McReynolds Farm integrator named
11 Peterson Farms; is that correct?

12 A. Yes.

13 Q. Okay. If you'll look at Frame 912.

14 A. Yes.

15 Q. And -- and if I match that back up to your
16 description, it says -- well, why don't you -- why don't
17 you read what 912 says.

18 A. Sure. I believe, if I remember correctly, it's
19 saying that we're taking the picture maybe north to south
20 and it's also associated with Frame 741 and 742 and that
21 there's an active fan with litter on the ground.

22 Q. Okay. So 741 and 742, because I see -- if you'll
23 look up at 908 just above that, I see those same numbers
24 and I'm just trying to understand. And I also see it in
25 association with 913. Well, and if I'd look over to the

Jack Walton

April 8, 2009

71

1 right, do you see where it says photographs, that box says
2 photographs and it says WP 741, could that be waypoints?

3 A. Yes, it could be.

4 Q. Were those waypoints predetermined by somebody
5 else?

6 A. You'll have to give me a second to try and
7 remember, because --

8 Q. Take all the time you need.

9 A. -- we -- we had waypoints that had been given to
10 us. And there were some, for example, if we came up on a
11 farm that was not documented in the waypoints that we were
12 given to go look at, then we would put in our own waypoint
13 based on a handheld GPS that we had. So I'm going to say
14 that these were given to us by someone else to go to that
15 location.

16 Q. Okay. And not to break our train of thought, but
17 you brought something up I want to ask about --

18 A. Okay.

19 Q. -- since you did bring it up. You said if you
20 would come across a -- a farm that wasn't an assigned
21 waypoint, you would stop and do an investigation. Did I
22 hear you correctly?

23 A. Well, we weren't investigating anything. We were
24 just documenting what was there. But again, to my
25 recollection, I -- I -- I'm really trying to remember. We

Jack Walton

April 8, 2009

72

1 had books that had waypoints in them. Like, for example,
2 Waypoint No. 84 was this waypoint. But I'm -- I'm 99
3 percent sure that that waypoint was given to us and that's
4 why we ended up at this location. Most of the stuff that I
5 remembered that -- and there weren't many, that we came
6 across were old, abandoned, almost fallen down, torn down,
7 hadn't been used for quite some time type stuff. And we
8 documented them, try just to make sure that we tried to
9 document everything that we could.

10 Q. Fair enough.

11 A. That's the best of my recollection.

12 Q. Thank you.

13 A. You bet.

14 Q. Let's go back to -- to Frame 912.

15 A. Okay.

16 Q. You reference here -- is this your handwriting?

17 A. Yes, it is.

18 Q. You reference litter on the ground?

19 A. Yes.

20 Q. Can you identify that litter for me on Frame 912?

21 A. Sure. Especially in the -- and again, I'm gonna
22 say this -- the first building, which is the building in
23 the back of the picture. Just so we're looking at the same
24 building.

25 Q. The buildings are numbered 1 and 2. Do you see

Jack Walton

April 8, 2009

73

1 that?

2 A. Yeah, it's Building No. 2 that I'm looking at.
3 And the dark substance coming out of the door appears to be
4 chicken litter, like tracked-out chicken litter from the
5 door.

6 Q. I hate to do this. Can I borrow your copy because
7 yours is in color?

8 A. Sure. Go ahead.

9 Q. Okay. I see what you're referencing now.

10 A. Okay.

11 Q. Did you take a sample of that suspected litter
12 which you assumed was litter?

13 A. No. We didn't go on anybody's property.

14 Q. So you don't really know if that was litter?

15 A. No.

16 Q. Let's look now at Frame 913 and can you read the
17 description for 913?

18 A. Yeah. It looks like a service drive, which I'm
19 assuming is back to the building that also goes with 741
20 and 412, which I'm assuming are probably on a different
21 sheet of paper, maybe. Trailer, dump truck, spreader,
22 uncovered chicken litter, edge of yard.

23 Q. Okay. Can you tell me what W/S means?

24 A. I probably could when I wrote it.

25 Q. All right. But as you sit here today, you have no

Jack Walton

April 8, 2009

74

1 idea what that means?

2 A. I don't recall, no.

3 Q. Okay. You note there uncovered chicken litter
4 edge of yard. Can you identify that for me?

5 A. Yes. There's a -- what appears to be a pile back
6 in the right between the building and the tree on the right
7 edge frame.

8 Q. That looks like a pile of dirt?

9 A. Or a pile of litter, yeah. I'm -- yes.

10 Q. Yes, it does look like a pile of dirt?

11 A. Or a pile of litter, yes.

12 Q. How could one distinguish from this vantage point
13 whether that was dirt or litter?

14 A. Usually we -- we could tell by smell. Chicken
15 litter has a pretty distinct smell, as I'm sure you know.
16 And again, we didn't go on property and take samples
17 because we were told to stay off the property of everybody,
18 so we didn't intrude on anybody.

19 Q. So you could smell that pile is what you're
20 telling me?

21 A. I don't recall -- I can't tell you sitting right
22 here that, yes, I did smell that. I'm just kind of trying
23 to go based off the notes and I'm just kind of assuming
24 that's what we did.

25 Q. Did you have to make a lot of assumptions when you

Jack Walton

April 8, 2009

75

1 saw a pile that it was chicken litter?

2 MR. ISKANIAN: Object to form.

3 A. No. It was usually -- once you do it two or three
4 times, you get a pretty good idea of what chicken litter
5 looks like and smells like. Again, no expert, this is
6 laymen's opinion only.

7 Q. (BY MR. MIRKES) And I completely understand and
8 appreciate that.

9 MR. MIRKES: I believe that's all the
10 questions I have.

11 Q. With respect to seeing a pile of litter on any of
12 the various defendants' property, pile of litter, pile of
13 anything --

14 A. Uh-huh.

15 Q. -- did you have to make an assumption as to what
16 that was a pile of?

17 MR. ISKANIAN: Object to form.

18 A. I'm gonna say no. Some were very evidently --
19 most were very evidently chicken litter, just based on --
20 usually if it's in a chicken litter shack, which is a lot
21 of stuff that we did, it's chicken litter. Or if there's
22 chicken litter or stuff coming out of the barn, it's not
23 dirt, it's chicken litter. You can smell it. You can see
24 it. But again, that's just my layman's opinion based on
25 the things that I saw when I was over there.

Jack Walton

April 8, 2009

76

1 Q. (BY MR. MIRKES) What we see in Photo 913 and
2 that -- in looking through the documents, there's various
3 photos that are similar to this.

4 A. Uh-huh.

5 Q. -- this appears not to be in any kind of a shack.
6 It appears to be -- I can't tell distance in this photo,
7 but a fair distance from where your vantage point is. And
8 you just said you had to assume that that was chicken
9 litter. And -- so my question to you is, did you make
10 those kind -- same kind of assumptions in the same scenario
11 for all the defendants' farms that you visited?

12 MR. ISKANIAN: Object to form.

13 A. You would have to be specific with that because I
14 don't know. You would have to show me pictures and stuff.

15 Q. (BY MR. MIRKES) We're on Exhibit 6. I'm gonna
16 hand you what's been marked as Exhibit 6.

17 (Exhibit No. 6 was marked.)

18 Q. Does this appear to be a report that you wrote --

19 A. Yes.

20 Q. -- Mr. Walton? And this report is dated
21 6/16/2005; is that correct?

22 A. Yes.

23 Q. And this is -- the grower you were investigating
24 at this time was Bloomfield Farm and that is a Peterson
25 grower. It's not -- it's not noted on the form, but I will

Jack Walton

April 8, 2009

77

1 represent to you that it is. Earlier we had some
2 discussion about the check boxes for stack used litter/cake
3 and stacked new litter. Do you remember that discussion?

4 A. Yes.

5 Q. And I see in -- on this form that both of those
6 boxes are checked. And based upon your earlier description
7 of what those two boxes meant, I guess I would ask for you
8 to describe for me where the new litter was as opposed to
9 the used litter and why you checked both of those boxes.

10 A. The only thing I can think of, and again, not
11 recalling the incident specifically but looking at the
12 notes, was that I was with Rod Hummel on this occasion.
13 And they were out there almost every day. So he could
14 tell -- we had conversations about what was, you know, if
15 that was new litter, if he saw it yesterday or the day
16 before when he was out there with somebody else or if it
17 was used litter that, you know, maybe we had both seen last
18 week or whatever. So that's why -- that's the only thing I
19 can assume both of those boxes are checked, without
20 speaking to him specifically in reference to that. I don't
21 know.

22 Q. I asked Mr. Hummel specifically if someone
23 answered a question that he was driving based upon the
24 form, that he would have no reason to disagree with an
25 answer that was given by that person and in this case that

Jack Walton

April 8, 2009

78

1 person was you.

2 A. Okay.

3 Q. So that both -- you know, both observers would
4 have the same observation that is listed on the form. If
5 Mr. Hummel were out there the day before, like you said, as
6 a possibility, would there be a form created for that, an
7 investigation form?

8 A. Not that I'm aware of. There could have been, but
9 I've never filled one out.

10 Q. Okay. So I understand, was there anytime you were
11 in the Watershed doing this investigation that you did not
12 fill out a form?

13 A. No.

14 Q. Was it protocol if -- if you were out in the
15 Watershed observing or investigating that you filled out a
16 form?

17 A. Yes.

18 Q. Did you ever -- did you ever observe what I will
19 call bedding material, which would be new bedding material
20 outside of a poultry house prior to them putting it in and
21 then adding poultry?

22 MR. ISKANIAN: Object to form.

23 Q. (BY MR. MIRKES) Was I unclear?

24 A. I'm not sure. You're gonna have to be little more
25 descriptive in bedding material.

Jack Walton

April 8, 2009

79

1 Q. What is litter, in your own --

2 A. Chicken waste.

3 Q. In your observation, is it only the chicken
4 excrement or do they add a bedding layer prior to putting
5 chickens in there?

6 MR. ISKANIAN: Object to form.

7 A. And I don't know.

8 Q. (BY MR. MIRKES) So -- so far as you know, litter
9 is 100 percent excrement?

10 A. I really --

11 MR. ISKANIAN: Object to form.

12 A. I don't know.

13 Q. (BY MR. MIRKES) Do you know what shavings are?
14 Did you ever hear of that term?

15 A. No.

16 Q. Rice hulls?

17 A. No.

18 Q. Let's look at Photo 814, if you will, Frame 814.

19 A. Okay.

20 Q. What does that depict?

21 A. Uncovered chicken litter.

22 Q. How do you know?

23 A. Again, I'm gonna have to go back to look and
24 smell, because we were obviously reasonably close to this.
25 But again, I don't specifically recall taking the picture.

Jack Walton

April 8, 2009

80

1 Q. Were you on a public roadway when you took this
2 photo?

3 A. Yes. On a public roadway or county road or public
4 access. We never entered property.

5 Q. So you, again, assume that that's chicken litter.
6 You didn't take any samples or --

7 A. Correct. We did not --

8 MR. ISKANIAN: Object to form.

9 A. We did not take a sample.

10 Q. (BY MR. MIRKES) Look at Photo 815, if you will.
11 And the description of this, I read it to say unknown
12 liquid tank. Is that a fair reading of that?

13 A. Yes, that was a fair reading.

14 Q. What -- why did you take a photo and note an
15 unknown liquid tank?

16 A. I think we tried to document everything that was
17 just in that area around the chicken houses, whether I
18 personally knew what it was or not. That's why I didn't
19 try and guess. I just said it was unknown, what appeared
20 to be a liquid tank.

21 Q. So it was -- it was more -- and I'm really asking
22 for my own curiosity, this was more of a maybe an
23 indication that -- that this was an active poultry house,
24 because there's a liquid tank or --

25 A. I think it was --

Jack Walton

April 8, 2009

81

1 MR. ISKANIAN: Object to form.

2 A. I think it was just me trying to document
3 everything that was right around the houses.

4 Q. (BY MR. MIRKES) Okay. Anything else in these
5 photographs that appear to be improper or unlawful?

6 MR. ISKANIAN: Object to form.

7 A. Other than my focus skills, no, there isn't.

8 Q. (BY MR. MIRKES) I may have already asked this.
9 Did -- you -- you visited in your time in the Watershed,
10 several Peterson contract grower farms; is that correct?

11 A. I would think so, yes.

12 Q. As you sit here today, do you have any
13 recollection of visiting those farms?

14 A. No.

15 Q. Do you ever remember seeing a Peterson sign while
16 in the Watershed?

17 A. I can't specifically point you to a specific
18 location, but yes, we saw several signs.

19 Q. Did you see any unlawful activity at any of those
20 contract grower farms?

21 MR. ISKANIAN: Object to form.

22 A. Again, not knowing what is unlawful in that area,
23 I don't know.

24 MR. MIRKES: I'm gonna pass the witness.

25 MS. HILL: I thought I was done. I have one

Jack Walton

April 8, 2009

82

1 more question.

2 FURTHER EXAMINATION

3 BY MS. HILL:

4 Q. Today you've been asked questions about Cargill
5 contract growers, persons associated with Cargill, persons
6 associated with George's and persons associated with
7 Peterson. Sitting here today, do you have any independent
8 recollection of making observations of growers or other
9 persons associated with any of the other defendants in this
10 litigation?

11 A. No.

12 MS. HILL: Thank you. I have no further
13 questions.

14 MR. ISKANIAN: I just have a couple of short
15 ones.

16 EXAMINATION

17 BY MR. ISKANIAN:

18 Q. I believe you just testified to when Peterson's
19 attorney was questioning you that you -- after I objected,
20 you said that you had not observed. The question, I
21 believe, was did you observe anything unlawful. Do you
22 observe anything unlawful in these pictures and I believe
23 you said no. Would it be fair to say that you did not
24 observe anything lawful?

25 MR. MIRKES: Object to form.

Jack Walton

April 8, 2009

83

1 MS. HILL: Object to form.

2 A. Again, I'm gonna go back to the not knowing the
3 laws of the poultry industry or government, you know, that
4 effects that -- I -- I don't know.

5 Q. (BY MR. ISKANIAN) Okay.

6 A. We just documented what we saw and we turned it
7 over.

8 Q. And also throughout the day today, we've used the
9 words dispose, spread, dump, hazardous, litter, bedding
10 material, et cetera. Do you note that the context in which
11 we've used these words comply with their lawful definition?

12 MR. MIRKES: Object to form.

13 MS. HILL: Object to form.

14 A. I don't know.

15 Q. (BY MR. ISKANIAN) So is it fair to say -- is it
16 possible that the way you have used these or even that
17 counsel have used these words may not comply with how
18 they're actually defined in law?

19 MR. MIRKES: Object to form.

20 MS. HILL: Object to form.

21 A. Yes.

22 MR. ISKANIAN: No further questions.

23 MR. MIRKES: I've got some follow-ups based
24 on that.

25 FURTHER EXAMINATION

Jack Walton

April 8, 2009

84

1 BY MR. MIRKES:

2 Q. Based upon the questions you were just asked
3 regarding some of the words he just mentioned, does that
4 change any of your answers today, the -- the words we used?

5 A. No.

6 MR. MIRKES: That's all I have.

7 MS. HILL: I advise you that you have the
8 right to read and sign and review your testimony here today
9 or you may waive that.

10 THE WITNESS: Okay.

11 MS. HILL: What would you like to do?

12 THE WITNESS: I'll waive it.

13 MS. HILL: Okay. Thanks so much.

14 THE VIDEOGRAPHER: We're off the record at

15 3:12 p.m.

16 (End of proceedings at 3:12 p.m.)
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Jack Walton

April 8, 2009

85

1 STATE OF OKLAHOMA)

2 I, Lisa Smith, a Certified Shorthand Reporter in and
3 for the State of Oklahoma, do hereby certify that, pursuant
4 to the agreement hereinbefore set forth, there came before
5 me on the 8th day of April, A.D., 2009, at 1:24 p.m., in
6 the offices of Rhodes, Hieronymus, Jones, Tucker & Gable,
7 PLLC, located at 100 West Fifth Street, Suite 400, in the
8 City of Tulsa, State of Oklahoma, the following named
9 person, to wit: JACK WALTON, who was by me duly cautioned
10 and sworn to testify the truth, the whole truth and nothing
11 but the truth, of his knowledge touching and concerning the
12 matters in controversy in this cause; and that he was
13 thereupon carefully examined upon his oath, and his
14 examination was reduced to writing under my supervision;
15 that the deposition is a true record of the testimony given
16 by the witness; signature of the witness being waived
17 pursuant to agreement of the parties; and that the amount
18 of time used by each party at the deposition is as follows:

19 Ms. Hill - 01 hours, 12 minutes,

20 Ms. Lloyd - 00 hours, 04 minutes,

21 Mr. Mirkes - 00 hours, 27 minutes,

22 Mr. Iskanian - 00 hours, 01 minutes.

23 I further certify that I am neither attorney or
24 counsel for, nor related to or employed by, any of the
25 parties to the action in which this deposition is taken,

Jack Walton

April 8, 2009

86

1 and further that I am not a relative or employee of any
2 attorney or counsel employed by the parties hereto, or
3 financially interested in the action.

4 I further certify that, before completion of the
5 deposition, the Deponent _____, and/or the
6 Plaintiff/Defendant _____, did _____ did not _____ request
7 to review the transcript.

8 In witness whereof, I have hereunto set my hand and
9 affixed my seal this 20th day of April, A.D., 2009.



10  _____

11 LISA SMITH, OK CSR 01778

12 Expiration Date: 12/31/2009

Esquire Deposition Solutions

Firm Registration No. 286

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